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## NATIONAL JUDICIAL COLLEGE

**Peter J. Neeson**

**Peter J. Neeson**, Chair of the Environmental Law and Toxic Torts Sections, has been elected **Chairman of the Board of Trustees of the National Judicial College**, beginning in June 2014. Peter has served on the College's Board for three years and has also served as its treasurer.

The National Judicial College was founded in 1963 and is the nation's leading provider of judicial education. Judges from all areas of the judicial system, including those working in the limited and general jurisdiction fields, as well as administrative law, tribal, and military judges, participate in the judicial education programs offered at the College. The NJC presents an average of 90 courses/programs annually, with more than 3,000 judges attending from all 50 states, U.S. territories and more than 150 countries. The NJC is located on the campus of the University of Nevada, Reno.



Peter has been involved in numerous toxic tort matters in multi-district litigation and class action cases in both state and federal courts, including formaldehyde, multiple chemical sensitivity, sick building, latex glove, benzene, underground storage tank, silica, orthopedic bone screw, asbestos litigation and CERCLA Superfund cases. He has been selected as National Coordinating Counsel in the FRT, asbestos, latex glove and PPA drug litigation. In 2007, he served as Chair of TIPS (Tort Trial and Insurance Practice Section of the American Bar Association). In 2012 Peter received the prestigious ABA/TIPS James K. Carroll Leadership Award.

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# PENNSYLVANIA

## WRONGFUL DEATH

### DEFENSE VERDICT



**Daniel J. Rucket**

In September 2007, 20-year-old Michael Wilke, Jr. was addicted to heroin, unemployed, and living with his parents. He began treatment with an addiction specialist, but consistently refused to take his medication and continued using drugs. Wilke was treated next at a drug rehabilitation facility in New

Jersey for detoxification, but he used heroin the evening he left. Wilke was treated at another drug rehabilitation facility in Bensalem, Pennsylvania, where he stayed for almost three weeks. He began using heroin again a month and a half after completing treatment. On June 26, 2008, a week after his 21st birthday, Wilke got into a car accident while drunk and was charged with DUI.

Wilke's parents wanted him to seek professional treatment again, but Wilke wanted to self-detox at their campground at the New Jersey shore. While at the shore, Wilke went out to the Wildwood Boardwalk with friends, but left them to find drugs. After returning to the campsite, Wilke immediately wanted to turn around and go back out again. His uncle had to put him in a bear hug to prevent him from leaving. Wilke returned with his family to their home, but left half an hour later to buy drugs.

The next day, Wilke and his mother went to his family doctor's office to attempt to obtain a prescription for Methadone. After waiting for an hour and a half, they were unable to get the prescription. The next day, Wilke and his mother waited for two hours at a Methadone clinic, but were unable to

obtain Methadone because the clinic only treated uninsured individuals.

Wilke's mother contacted our client, Bowling Green Brandywine, a drug and alcohol treatment facility in Kennett Square, Chester County, Pennsylvania, which had a bed for Wilke. Wilke's parents drove him to Bowling Green on the morning of July 2, 2008.

Wilke started the admissions process, which including meeting with admissions counselor Sharon Moorhead, who reviewed a form with Wilke consisting of consents for treatment, statement of client rights, and client waivers. The consent for treatment section on the first page contained an exculpatory provision that states: "The undersigned agrees that the facility will not be responsible for the safety or care of the client if the client leaves the facility premises." Wilke advised Moorhead that he was experiencing withdrawal symptoms, including stomach cramps and leg pain. The admission process was completed around 12:30 p.m. At that time, Wilke was coherent, was not confused, and did not say anything to indicate that he was a danger to himself or others. Wilke did not complain about an inability to think or understand any of Bowling Green's documents. Despite some physical withdrawal symptoms, Wilke was doing well mentally.

Wilke was taken from the admissions office down to the nurse's station, in another building, to obtain a nursing assessment, which is an hour-long interview with the patient. The assessment does not include any medical treatment.

Under federal and state regulations, Bowling Green was not allowed to administer narcotic medicine, such as Methadone or Suboxone, to treat Wilke's opiate dependency until the facility obtained the results of a urinalysis and Wilke met with a medical doctor. Because urinalysis tests are sent to an outside laboratory, the results typically take 24 hours or more to come back. The only medication that Bowling Green could provide before these results were obtained and patients were seen by a doctor were "comfort medications" such as Motrin, Tylenol, and Trazadone. However, the comfort medications would treat only physical withdrawal symptoms. They would not treat craving for drugs or opiate dependency.

Wilke was provided lunch in the cafeteria, which he ate. Medical secretary Jamie Byrd met Wilke while he was eating lunch at 1:30 p.m., then took him outside to smoke a cigarette. They spoke and Wilke seemed a little nervous, but overall relatively normal. Nurse's Assistant Dawn Finnegan began the nursing assessment at 1:40 p.m. by taking Wilke's vital signs, obtaining some basic information, and reviewing a preliminary treatment plan with Wilke. Byrd left at 1:50 p.m. while Finnegan was with Wilke.

Wilke then decided that he wanted to leave the facility. Wilke went back to the admissions department between 2:00 and 2:30 p.m. Clinical Director Nancy Powell was called and met with Wilke to try to convince him to stay. According to Powell, Wilke was not in severe distress or withdrawal. Wilke agreed at that time to stay for treatment and Powell walked him back to nursing.

Nurse Thomas Fadigan saw Wilke in the hallway by the nurse's station and cafeteria around 3:15 to 3:45 p.m. Wilke told Fadigan that he wanted to leave. Fadigan went out into the hallway, spoke with Wilke, and tried to convince him to stay. According to Fadigan, Wilke was not impaired.

Powell met with Wilke a second time. At 4:10 p.m., Powell called Wilke's mother to have her speak with Wilke about staying for treatment. Wilke talked with his mother, who told him that she was not going to come and pick him up. Wilke again agreed to stay. According to his mother, Wilke was coherent, understood what was going on, used full sentences, could be understood, and did not express anything that indicated that he was a danger to himself or others during their conversation. According to Powell, Wilke was only in mild to moderate withdrawal at the time.

Joy Neary, a registered nurse for over 50 years who had worked at Bowling Green for 27 years, talked to Wilke at around 4:20 p.m. Wilke told her that he wanted to leave because he was not ready for treatment. Neary spent about ten minutes with Wilke, trying to convince him to stay, which he agreed to do.

At around 4:45 p.m., registered nurse Stephanie Pirches met with Wilke about getting his nursing assessment completed. Wilke asked her when he would be getting Methadone. Pirches explained that Methadone could not be provided until the urine screen came back and the chart was reviewed by a doctor, which would not be until the following day. Wilke was determined that he did not want to stay and refused the nursing assessment.

Wilke left Bowling Green on foot between 4:45 and 5:00 p.m. Less than an hour later, Wilke was crossing Route 322 near Conchester Road, approximately 15 miles from Bowling Green, and was hit by a car driven by Teresa Tobin. The accident rendered Wilke unconscious. Wilke was transported to Crozer Chester Medical Center, where he was pronounced dead later that evening.

Wilke's parents subsequently made a claim against Tobin and received \$25,000 from Tobin's insurance company,

Nationwide. They executed a Release from All Claims, which provided that they release Tobin, Nationwide, and any and all other persons, firms and corporations, whether named or referred to or not, of all claims and causes of action.

The Wilke family then filed suit against Bowling Green. Extensive discovery was conducted by the parties. Plaintiffs' counsel deposed a dozen employees and former employees of Bowling Green. Plaintiffs never disclosed or produced the Release or any documents relating to the claim against Nationwide. At the end of discovery, we were able to locate and obtain the Release from Tobin. We filed a motion for summary judgment claiming, among other things, that the exculpatory clause in the Bowling Green admissions forms barred this claim—that the accident was not foreseeable—and that the Wilke family released Bowling Green from all liability when they signed the Nationwide release. The Honorable Edward Griffith denied summary judgment, holding that New Jersey law applied to the Nationwide Release because it was signed by the Wilke family in New Jersey and therefore their intent, or lack thereof, to release Bowling Green was admissible and therefore an issue for the jury.

Trial commenced on February 20, 2013. Wilke's parents, siblings, grandparents, and cousins attended the trial daily. Plaintiffs' primary theory was that Bowling Green, a for-profit corporation, should have assessed Wilke more quickly

and provided him with comfort medications, which would likely have resulted in him not leaving the facility. Wilke's liability expert claimed that Bowling Green employees had no contact with Wilke and that no care was provided to him. We contended that Wilke was not in severe withdrawal or distress, that comfort medications were not necessary and would not have convinced him to stay, and that multiple employees tried in vain to convince Wilke to stay for treatment. Since Wilke was a voluntary patient, Bowling Green could not force him to stay. Heroin addiction is a serious problem, and many heroin-dependent patients leave detoxification against medical advice, particularly when they are unable to get Methadone quickly. We argued that Wilke was like many patients suffering from the disease of heroin addiction who are not ready to accept treatment or unable to overcome their cravings to stay for treatment, which is normal in this industry.

The case went to the jury on the seventh day of trial. The jury returned in two hours with a defense verdict for Bowling Green. Conversations with jurors after the trial revealed that they all believed that Bowling Green did not do anything that caused Wilke to leave the facility against medical advice. In the end, the case was about the disease of drug addiction causing this unfortunate accident, not the negligence of Bowling Green.

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*Wilke, et al. v. BGI of Brandywine, Inc., d/b/a Bowling Green Brandywine, CCP, Chester County, PA, No. 2009-09716-CA*

**Daniel J. Rucket** concentrates his practice in general casualty litigation, including premises, motor vehicle, construction, product liability, and catastrophic injury.

Dan graduated from the William and Mary Law School in 1993 and subsequently clerked for the Honorable Albert R. Subers in the Montgomery County Court of Common Pleas. Mr. Rucket is admitted to practice in Pennsylvania and the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania. He has been selected as a Pennsylvania Super Lawyer every year since 2010. He was selected as a Pennsylvania Rising Star in 2005, 2006 and 2007.

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